

 Supreme Court, U.S.  
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IN THE  
Supreme Court of the United States

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RUSSELL E. LERMAN, on behalf  
of himself and all others  
similarly situated

Petitioner,

v.

DIANE LEGREIDE, Director,  
State of New Jersey, Division.  
of Motor Vehicles

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On Petition for Writ of Certiorari  
to the Superior Court of  
New Jersey, Appellate Division

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PETITION FOR WRIT OF CERTIORARI

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**QUESTION PRESENTED**

Whether the Supremacy Clause of the U.S. Constitution takes precedence over a discrete part of a New Jersey penal statute, that is unconstitutionally vague on its face being devoid of a relative invariable standard of guilt or a rule of action, because of which it is being arbitrarily and discriminatorily misused by an administrative agency against motor vehicle owners to indefinitely suspend their driving licenses, which results in the deprivation and the arbitrarily undermining of a property and liberty interest that is protected by the Due Process Clause in the Fourteenth Amendment.

## TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES .....	ii
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
ORDERS.....	1
STATUTES AND AMENDMENTS INVOLVED.....	1
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE WRIT.....	6
CONCLUSION.....	17
APPENDIX.....	18

## TABLE OF AUTHORITIES

### CASES

A.B. Small Co. v. Am. Sug. Refining Co., 267 U.S. 233 (1924).....	9
Atkinson v. Parsekian, 179 A.2d 732 (1962) .....	16
Champlin Refining Co. v. Corporation Com'n 286 U.S. 210 (1932).....	9
Cline v. Frink Dairy Co., 274 U.S. 445 (1927) .....	13
David v. Strelecki, 235 A.2d 195 (A.D. 1967) .....	11
General Motors Corp. v. Blevins, 144 F.Supp. 381 (D.Colo. 1956).....	12
Giaccio v. Pennsylvania, 382 U.S. 399 (1966) .....	10
Guidi v. Atlantic City, 668 A.2d 1098 (A.D. 1983).....	15
Hanna v. Larch, 363 U.S. 420 (1960).....	5
International Shoe Co. v. Washington, 326 U.S. 310 (1955).....	5
Kent v Dulles, 357 U.S. 116 (1958).....	11, 14
Koshland v. Helvering, 298 U.S. 441 (1936) .....	13
Lanzetta v. New Jersey, 306 U.S. 451 (1939) .....	12
Manhattan Gen'l Equip. Co. v. Commissioner of Internal Revenue, 297 U.S. 129 (1936) .....	13
Miller v. Depuy, 397 F.Supp. 166 (E.D. Pa. 1969)....	11
Motor Veh. Mfr's Ass'n v. State Farm Mutual	

### iii

463 U.S. 29 (1983).....	11
Motor Veh. Div. v. Levine, 461 A.2d 54 (A.D. 1983) ..	14
N.J. Div. of Motor Veh. v. Egan, 511 A.2d 133 (1970) .....	9,14
Panama Refining Co. v. Ryan, 293 U.S. 388 (1935) ..	13
Parks v. Libby-Owen-Ford Glass, 95 N.E. 616 (1935).....	14
Silverman v. Berkson, 661 A.2d 1266 (1995) .....	4,5,6
State v. Rowe, 181 A. 706 (Supr.Ct. 1935) .....	10
U. S. v. L. Cohen Grocery, 255 U.S. 81 (1921).....	9,15
U. S. v. Grimaud, 220 U.S. 506 (1911).....	13
U. S. v. Guest, 383 U.S. 745 (1966). .....	11
Wall v. King, 206 F.2d 878 (1st Cir. 1953). .....	11
Wolan v. Ferber, 79 A.2d 86 (A.D. 1951) .....	8

### CONSTITUTIONAL PROVISIONS

Fourteenth Amendment.....	1,3,10,11,16,17
---------------------------	-----------------

### STATUTES

28 U.S.C. § 1257(a).....	1
Motor Vehicle Act.....	2,3,5,6,7,8,9,10,14,16
N.J.S.A. 2A: 16-51 .....	4
N.J.S.A. 2A: 16-52 .....	3
N.J.S.A. 2A:10-53 .....	4
N.J.S.A. 39:4-144 .....	2,16,32
N.J.S.A. 39:4-50.4(a).....	14
N.J.S.A. 39:5-30 .....	2,4,5,16,32
N.J.S.A. 39:5-30.3 .....	16
N.J.S.A. 39:5-30(a).....	3,6,7,8,16,32
N.J.S.A. 49:3-68 .....	5,35
R.S. 135-55.....	6,29

### NEW JERSEY ADMINISTRATIVE CODE

N.J.A.C 13:19-10.1... ..	16
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### OTHER AUTHORITIES

1 Lewis Sutherland on Stat. Const (2 <sup>nd</sup> Ed.) .....	7
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**PETITION FOR WRIT OF CERTIORARI TO THE  
APPELLATE DIVISION  
OF THE SUPERIOR COURT OF NEW JERSEY**

Petitioner Russell E. Lerman respectfully prays that a Writ of Certiorari issue to review the judgment of the Appellate Division of the Superior Court of New Jersey entered in this matter on January 19, 2005 with a subsequent Motion for Reconsideration being summarily denied on February 17, 2005. A Petition for Certification and an Appeal was taken to the Supreme Court of New Jersey which was summarily denied on May 13, 2005. A subsequent motion for reconsideration was summarily denied and entered on June 22, 2005

**OPINIONS BELOW**

The Appellate Division's unreported opinion is annexed on APP.36- 39.

**JURISDICTION**

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

**ORDERS**

The Appellate Division of the New Jersey Superior Court affirmed the dismissal of the Petitioner's class action complaint for declaratory relief in the Law Division of the Superior Court of New Jersey on January 19, 2005. A subsequent Motion for Reconsideration to the Supreme Court of New Jersey of its summary denial of a Petition for Certification was entered on June 22, 2005..

**STATUTES AND AMENDMENTS INVOLVED**

Amendment XIV-Rights guaranteed, privileges and immunities of citizenship, due process and equal protection:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **STATEMENT OF THE CASE**

#### *1. Background*

The Petitioner was operating his car in Randolph Township, New Jersey when he was stopped by a patrol officer who issued a traffic ticket for a purported violation of N.J.S.A. 39:4-144.(APP.18,¶1;19,¶3 ). The ticket was facially fatally defective and therefore the Petitioner did not litigate it in the Randolph Municipal Court nor was he ever convicted of the said offense. (APP. 18,¶1;APP.19,¶3)

The nonappearance executed a convenient computer generated boiler plate scheduled driving license suspension notice. (APP. 19,¶3, APP.27-8) This format clearly indicated that it was a very commonplace event in New Jersey. The notice was arbitrarily concocted by the Respondent's administrative agency, the Division of Motor Vehicles (DMV) now known as the Motor Vehicle Commission. (MVC).

The said notice was fatally flawed because it contained a primary standard of guilt, i.e. "failed to answer summons(es) in the following court", that was not articulated in the Motor Vehicle Act. [APP.29-30; App.32-5) This act was originally enacted by the state legislature in 1921. (APP.29) The said notice wrongly claimed it derived the authority to execute it from a section of the act, i.e. N.J.S.A. 39:5-30. (App.19,¶6; APP.28) All of which violated the "fair warning"

requirement in the due process clause of the Fourteenth Amendment which protects a motor vehicle owner's driving license as it is a liberty and property interest. [APP.20,¶7; APP.24,¶13(a)] The Petitioner did not obey the DMV order, that was contained in the notice, to voluntarily appear in municipal court within 59 days. (APP.27-8) Therefore the Petitioner's driver's license was typically summarily indefinitely suspended on or about March 29, 1996. [APP.18,¶ 1]

## 2. *Superior Court Proceedings*

The Petitioner invoked the original jurisdiction of the Law Division of the New Jersey Superior Court on December 23, 2002 under the Declaratory Judgment Act, § N.J.S.A. 2A:16-52 [APP.18 ] The multi faceted Complaint was predicated on the patent constitutional defects in section N.J.S.A. 39:5-30(a) of the Motor Vehicle Act. The relief sought was to declare null and void and to restrain the Respondent from using the defective part of this section as a pretext to suspend a vehicle owner's driving license for the said nonappearance. Further relief sought was to reinstate the Petitioner's driving license to the status quo as of March 29, 1996. [App.25,¶¶ 1,2].

The trial court failed to find essential facts that should have been found. This failure was caused by the Respondent's strategy to dismiss the Complaint for lack of jurisdiction, thereby denying the Petitioner his day in court under the Declaratory Judgment Act. The initial Respondent's dismissal motion was granted on December 4, 2003 as it was purportedly unopposed. The Petitioner appealed this decision to the Appellate Division on January 20, 2003. After a request by the Petitioner, a court administrative official conducted an investigation which determined that the Petitioner's opposition brief was mysteriously deleted from the trial court's case file even though the official docket entries showed it had been timely received by the trial court. The dismissal order was vacated at the behest of the



court administrator. Consequently a copy of the opposing brief was supplied to the trial court by the Petitioner. On February 9, 2004 the trial court unequivocally enjoined the Respondent's null and void action of suspending driving licenses for the failure to answer a traffic complaint in a municipal court.

Mysteriously the trial court's order failed to reinstate the Petitioner's driving license to the status quo as of March 29, 1996. This contradictory order forced the Petitioner to amend the appeal pending in the Appellate Division on March 12, 2004. Appellate Division proceedings were further substantially delayed pursuant to two consecutive requests by the Respondent to submit a tardy answering brief.

On June 7, 2004, despite the fact the case was pending in the Appellate Division, the trial court inexplicably reversed the said injunction order and dismissed the Declaratory Judgment Complaint which directly contradicted N.J.S.A. 2A:16-51 "to **settle** and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations" and N.J.S.A. 2A:16-53, "A person...whose **rights**, status or other relations are effected by a **statute** ...may have determined any **question of construction** or validity arising under the ...statute and obtain a declaration of rights, status or other legal relations thereunder." The Petitioner was thereby denied the protection of his Constitutional rights.

The Respondent never assented nor denied the constitutionality of the patent defect in N.J.S.A. 39:5-30. **The dismissal order did not render constitutional the patent defect in N.J.S.A. 39:5-30.** It is in the public interest to determine the constitutionality of section N.J.S.A. 39:5-30.

The Appellate Division affirmed the decision of the Law Division on January 19, 2005, by citing the case of *Silverman v. Berkson*, 661 A.2d 1266, 141 N.J. 412 (1995) in its opinion. (APP.36-39) This case



construed N.J.S.A. 49:3-68 (APP.35-6) "the subpoena statute " which deals with an **investigative procedure**. The statute that the Petitioner wanted to be construed was the Motor Vehicle Act, and in particular section N.J.S.A. 39:5-30(a) which entails **accusatory procedures**. This opinion was not persuasive as the investigative statute N.J.S.A. 49:3-68 was **not in pari materia** with the said accusatory section. An investigative procedure does not contain an accusation or standard of guilt nor rule of action. The person subpoenaed does not have to be "forewarned" by a statute regarding his conduct. The only issue decided in *Berkson* was the constitutionality of issuing an investigative subpoena to a resident of New York. The New Jersey Superior Court had the statutory authority to subpoena witnesses for the investigative bureau. (App.35, ¶21(c)) The same statute shows [App.36, ¶21(d)] that Berkson's liberty or property interests were not at stake in those investigative hearings. This Court in *Hannah v. Larch*, 363 U.S. 420, 441, 442 (1960) said that an investigative committee :

"...does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights"... "Since the Commission does not adjudicate, it need not be bound by adjudicatory procedures".

The court in *Berkson* simply ruled that he was amenable to the In Personam jurisdiction of the Superior Court's process as the New Jersey long arm rule could be extended under the Constitutional principles found in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

Therefore the procedures used by the Respondent under the "void for vagueness" method in section N.J.S.A. 39:5-30 of the Motor Vehicle Act, that

violates the "fair warning" requirement in the due process clause, is not parallel with the method used under the "subpoena statute".

This Court's teachings explicitly exposes the unconstitutionality of the vague term "reasonable " used in accusatory proceedings. Conversely, this Court's teachings supports the Constitutional principle of "minimum contacts" to obtain In Personam jurisdiction for an investigative proceeding. Therefore the "subpoena" and "license suspension" statutes are distinguishable and their interpretation is not "in pari materia."

Consequently the Appellate Division's tricky opinion of January 19, 2005, with its several misleading statements of facts and the use of the *Berkson* decision, is erroneous.

The use of case law involving an **investigative** procedure would not provide any reason to extend its holding to the Respondent's authority to suspend driving licenses. Therefore it is not applicable to the instant matter and has no probative effect on the Constitutionality of N.J.S.A. 39:5-30 (a).

### **REASONS FOR GRANTING THE WRIT**

In 1921 New Jersey enacted its Motor Vehicle Act (APP.29). A section of this act, i.e. R.S. 135-55, [APP.29] now found in N.J.S.A. 39:5-30(a) [APP.32-4], adopted a twofold method by which a person's driving license may be suspended. If either part is violated the license may be suspended. Thus the parts are not interlinked and are severable.

Neither did the boiler plate scheduled suspension notice prepared on January 30, 1996 for the Petitioner by the Respondent's agency [APP.27-8] nor the Opinion below [APP.38, ¶3] **specify** which part purportedly provided Respondent with the Constitutional authority to suspend the Petitioner's

driving license. Therefore the said two parts will be analyzed separately for their Constitutionality.

A. Reasonable Grounds.

Motor Vehicle Act section, N.J.S.A. section 39:5-30 (a), phrase that says, "on any other reasonable grounds". [APP.33] is **not** a standard of guilt or rule of action. The New Jersey legislature's enactment in 1921 failed to establish a standard or rule of action. This phrase is "void for vagueness" as it does not explicitly inform thousands of New Jersey vehicle owners what conduct on their part will render them liable to its license suspension penalty. Instead of prescribing a primary standard of conduct, it facially authorizes the enforcer unfettered discretion to prescribe **them**. The fundamental distinction is between two distinct scenarios:

- 1) a delegation of power to make a law, which involves a discretion as to which the law shall be
- 2) conferring an authority or discretion as to its **execution** to be exercised under and in pursuance of the law.

The first scenario cannot be done; the latter is unobjectionable. [1 *Lewis Sutherland on Stat. Cons.* (2d Ed) § 88] The first scenario is precisely what had occurred when the Respondent's administrative agency arbitrarily concocted an unconstitutional suspension notice based on the nonappearance by a person in a municipal court to answer a traffic summons. [APP. 28-9] This transgression repudiates this nation's germane jurisprudence system. It also will misguide other jurisdictions to use the same unconstitutional modus operandi, under the guise of statutory construction. **It is in the public interest to determine the Constitutionality of section N.J.S.A. 39:3-30(a).**

Void for vagueness

The words "reasonable grounds" are not

quantifiable. As defined 'reasonable' connotes breadth. There is no method of measuring this term taken together or separately. While the test is not required to be quantifiable the Respondent cannot be vested with authority in a manner which as here, leaves it with such latitude and unfettered discretion that she cannot be held accountable. The standard of review of **Constitutional** challenges to state action depends upon whether a fundamental right or suspect classification is involved. If so, the court must review the action under a "**strict scrutiny analysis**".

The Petitioner claims the "reasonable grounds" part of N.J.S.A. 39:5-30(a) is unconstitutional on its face because it is unduly vague. A vague statute is **not** reasonably necessary to achieve the legislative intent of **removing unsafe drivers from the state's highways**. The Motor Vehicle Act is **replete** with sections containing **explicit** invariable standards of guilt or rules of action dealing with motor vehicle infractions.

A statute may be "void for vagueness" if a reasonable person must necessarily guess its meaning because:

- 1) the applicable coverage of the statute is unclear.
- 2) It fails to specify what those within its reach are required to do in order to comply.
- 3) it permits public officials to exercise unreviewable discretion in their enforcement of it because of lack of standards.

See *Wolan v. Ferber*, 79 A.2d 86, 87, 12 N.J.Super. 167, 168-9 (A. D. 1951):

"We are doubtful whether the clause which authorizes revocation of the license "on any other reasonable grounds" is valid or whether it is fatally defective in failing to warn the licensee what conduct on his part may bring about a forfeiture of his license. *U.S. v. L. Cohen Grocery Co.*, 255 U.S. 81, 41 S.Ct. 298, 65 L.Ed 516